IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.8 OF 2006
IN
SUIT NO.2131 OF 2004

Anantrai Shantilal Shah Plaintiff

versus

Peace Constructions Pvt.Ltd.
and others Defendants

Mr.Baptist D'Souza for plaintiff.

Ms.Jacinta D'Silva for defendants 1 to 5.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th March 2006

PC :

1. Heard Shri D'Souza appearing for plaintiff and Ms.D'Silva for defendants 1 to 5. The plaint is being amended in the light of the fact that earlier a writ petition was filed in this Court seeking demolition of the alleged illegal construction. During hearing of the writ petition it was pointed out that the nature of the dispute being a civil dispute and a civil suit being already pending, the remedy of the petitioner is to amend the plaint and seek

appropriate directions including mandatory directions against MCGB..

2. It is pursuant to that liberty and to place on record details pertaining to the construction, that the present Chamber Summons is taken out.

3. The learned advocate appearing for the defendants 1 to 5 invites my attention to the affidavit filed in reply and contends that the prayer made now seeking demolition of the alleged illegal construction, cannot be granted as for the self same relief a suit has already been filed in the Bombay City Civil Court.

4. In my view, when nothing has been brought to my notice which prevents this Court from entertaining present application and granting it, it will not be proper to deny the relief in the Chamber Summons. More so, when merits of the amended pleas including bar to grant the same in law, is open for being agitated to both, the present defendants and the newly added defendant MCGB..

5. There is no change in the cause of action nor any prejudice will be caused, as the pleas on

merits including limitation are kept open for being agitated.

6. Chamber Summons is allowed in terms of prayer clause (a). The plaintiff to pay costs to defendants 1 to 5 quantified at Rs.2,000/- (Rs.Two thousand only).

7. Shri D’Souza states that the suit filed in the City Civil Court is not being instituted by present plaintiff. This fact is denied by learned advocate for defendants 1 to 5. In my view, it would be open for the defendants 1 to 5 to raise these pleas including by filing additional written statement.

(S.C.DHARMADHIKARI, J.)